SUBJECT INDEX

PAGE

I.

Opinion below 1

II.

Jurisdiction 3

III.

Constitutional provisions and statutes involved 4

IV.

Questions presented 7

V.

Statement of material facts 8

VI.

The Supreme Court properly assumed jurisdiction 18

A. Petitioner properly raised the constitutional points in timely fashion in the tribunal below 18

B. The denial of the petition for writ of review by the California Supreme Court was a final judgment within the meaning of 28 U. S. C. A. 1257 22

C. The refusal to review by the Supreme Court of California was based upon an evaluation of the constitutional significance of the evidence 24

1. The only reasons indicated by the Committee of Bar Examiners for denying petitioner admission to the Bar were reasons which violated petitioner's constitutional rights 25

2. Any possible independent state ground asserted herein is not substantial or sufficient 32

PAGE

VII.

Summary of argument 34

VIII.

Argument 37

A. The right to practice law is a right of liberty and property protected by the Fourteenth Amendment 37

B. When concepts such as "good moral character" are interpreted to include within them political beliefs, opinions and associations, they violate petitioner's rights under the First and Fourteenth Amendments 42

C. The denial to the petitioner of the right to practice law although otherwise qualified because of newspaper articles written by him and his views otherwise expressed constituted a denial of due process and the equal protection of the law 49

D. The procedures adopted by the Committee of Bar Examiners constituted a denial of due process 53

E. Petitioner was denied due process of law when the Committee of Bar Examiners retroactively established political tests for admission to the bar 55

IX.

Conclusion 57

TABLE OF AUTHORITIES CITED

CASES	PAGE
Allen v. Arguimbau, 198 U. S. 149	24
Allgeyer v. Louisiana, 165 U. S. 578	40
Arctander, In re, 110 Wash. 296, 188 Pac. 380	52
Atchison, T. & S. F. Ry. Co. v. Public Utilities Commission, 346 U. S. 346	23
Bridge Proprietors v. Hoboken Land and Improvement Company, 1 Wall. 116, 68 U. S. 142	18
Brown et al. v. Board of Education of Topeka, 347 U. S. 483	49
Brydonjack v. State Bar, 208 Cal. 439	22, 23
Burch, In re, 73 Ohio App. 97, 54 N. E. 2d 803	50, 51
Chaires v. City of Atlanta, 164 Ga. 755	48
Chicago Housing Authority v. Blackman, 4 Ill. 2d 319, 122 N. E. 2d 522	39
Clifton, In re, 33 Idaho 614, 196 Pac. 670	52
Cole v. Young, 351 U. S. 536	48
Columbia Water Power Company v. Columbia Electric Street Railway Light & Power Co., 172 U. S. 475	19
Craig v. Harney, 331 U. S. 367	32
Crowell v. Randall, 35 U. S. 368	24
Cummings v. Missouri, 71 U. S. 277	40
Dent v. West Virginia, 129 U. S. 114	40
Frost & Frost Trucking Company v. Railroad Commission of California, 271 U. S. 583	41
Garland, Ex parte, 71 U. S. 333	40
Garland, In re, 219 Cal. 661, 28 P. 2d 354	55
Goodell, In re, 39 Wis. 232	39
Green Bay & M Canal Company v. Patten Paper Co., 172 U. S. 58	19
Hannegan v. Esquire, Inc., 327 U. S. 146	42
Hovey, In re, 7 Cal. Unrep. 203, 81 Pac. 1019	55

PAGE

Johnson v. Risk, 137 U. S. 300 ..... 24, 32
Jordan v. George, 341 U. S. 223 45
Kaukauna Water Power Company v. The Green Bay and Mississippi Canal Company, 142 U. S. 254 30
Korematsu v. United States, 323 U. S. 214 48
Lavine, In re, 2 Cal. 2d 328 22
Lawrence v. State Tax Commission, 286 U. S. 276 32
Lawson v. Housing Authority of City of Milwaukee, 270 Wis. 269, 70 N. W. 2d 605 39
Lawton v. Steele, 152 U. S. 133 48
Liggett v. Baldridge, 278 U. S. 105 41
Local Union No. 10 v. Graham, 345 U. S. 192 25
Maryland Casualty Co. v. Jones, 279 U. S. 792 22
Mayflower Farms v. Ten Eyck, 297 U. S. 266 41
Meyer v. State of Nebraska, 262 U. S. 390 48
Milk Wagon Drivers Union of Chicago Local 753 v. Meadowmoor Dairies, Inc., 312 U. S. 287 ..... 32, 33
Missouri ex rel. Gaines v. Canada, 305 U. S. 337 ..... 48, 49
Missouri ex rel. Hurwitz v. North, 271 U. S. 40 41
Murray v. Charleston, 6 Otto 432, 96 U. S. 432 18
Near v. Minnesota, 283 U. S. 697 42
New York ex rel. Bryant v. Zimmerman, et al., 278 U. S. 63 19
Pennekamp v. Florida, 328 U. S. 331 32
Salot v. State Bar, 3 Cal. 2d 615 ..... 8, 23
Schlemmer v. Buffalo, Rochester & Pittsburgh Ry. Co., 205 U. S. 1 31
Secombe, Ex parte, 60 U. S. 913 47
Semler v. Oregon State Board of Dental Examiners, 294 U. S. 608 41
Shattuck, In re, 208 Cal. 6 23
Smith v. Texas, 233 U. S. 630 ..... 41, 48, 49

PAGE

Spear v. State Bar of California, 211 Cal. 183, 294 Pac. 697 55
St. Louis Iron Mountain and Southern Railway Co. v. Starbird, 343 U. S. 592 19
Summers, In re, 325 U. S. 565 ..... 38, 39
Wells, In re, 174 Cal. 467, 163 Pac. 657 55
West Virginia State Board of Education v. Barnette, 319 U. S. 624 47
Williams v. Kaiser, 323 U. S. 471 32
Yazoo and Mississippi Valley R.R. Co. v. Adams, 180 U. S. 1 19
Yick Wo v. Hopkins, 118 U. S. 356 41

MISCELLANEOUS

Barrett, The Tenney Committee (Cornell Univer. Press, Ithaca), p. 44 46
Chafee, Free Speech in the United States (Harv. Univ. Press, Cambridge, 5th Ed., 1946) 52
Funk and Wagnalls New College Standard Dictionary of the English Language (N. Y. and London, 1947) 29
New York Times, July 31, 1956, p. 1 47
54 Northwestern University Law Review (1955), p. 94 45
Roget's International Thesaurus (New Ed., 1946) 29
18 University of Detroit Law Journal (1955), p. 195, Starrs, Considerations on Determination of Good Moral Character 43, 45, 46

STATUTES

California Business and Professions Code, Sec. 6000 22
California Business and Professions Code, Sec. 6046 22
California Business and Professions Code, Sec. 6047 22
California Business and Professions Code, Sec. 6060 ..... 4, 25
California Business and Professions Code, Sec. 6062 4
California Business and Professions Code, Sec. 6064.1 ..... 5, 25
California Business and Professions Code, Sec. 6066 22

PAGE

California State Bar Act, Sec. 6 5
California State Bar Act, Rule 10, Sec. 101 5
California Statutes of 1927 (amended 1939) 22
Judiciary Act of 1789, Sec. 25 18
Rules of the Supreme Court of California, Rule 59(b) 6, 21, 23
United States Code, Title 28, Sec. 1257 ..... 8, 22, 23
United States Code, Title 28, Sec. 1257(3) 3
United States Constitution, First Amendment 4, 7, 12, 21, 35, 36, 45, 48
United States Constitution, Fifth Amendment 4, 7, 21, 36
United States Constitution, Fourteenth Amendment 4, 7, 8, 21, 35, 36, 40, 45, 48, 49, 53, 55

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 5.

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

PETITIONER'S OPENING BRIEF.

I.

OPINION BELOW.

No written opinion has been handed down by any Court or other tribunal in this matter.

On February 8, 1954, after hearings before the Southern Subcommittee of the Committee of Bar Examiners of the State Bar of California, the Petitioner received a letter informing him that his application for admission to the Bar had been denied. A copy of this letter is set forth at page 131 of the Record.

After further hearings before the full Committee of Bar Examiners the Petitioner received a letter dated May 17, 1954, reading as follows:

"THE COMMITTEE OF BAR EXAMINERS
of the State Bar of California
458 S. Spring Street
Los Angeles 13

May 17, 1954.

To: Raphael Konigsberg, Applicant
2446 Echo Park Avenue
Los Angeles 26, California.
and
Edward Mosk, Esq., Applicant's Attorney
6305 Yucca Street
Hollywood 28, California.

Pursuant to your request of February 11, 1954, the record in the matter of your application for certification to the Supreme Court for admission to practice law which was before the Southern Subcommittee, has been reviewed by the entire Committee. In addition, a further hearing was held before the Committee on March 13, 1954.

It is the Committee's determination that you have not sustained the burden of proof (1) that you are possessed of the good moral character required by Section 6060(c) of the State Bar Act, or (2) that you comply with the provisions of Section 6064.1 of said Act.

Your application is denied.

By order of the Committee of Bar Examiners.

Goscoe O. Farley,
Secretary."

This letter constitutes the only notification in the form of an "opinion" received by Petitioner.

A Petition for Review was filed with the Supreme Court of the State of California on or about July 24, 1954, requesting Review of the denial of admission by the State Bar. On April 20, 1955, this Petition for Review was denied without written decision although Chief Justice Gibson and Justices Traynor and Carter were "of the opinion the writ should issue." [R. 132.]

II.
JURISDICTION.

The Order of the Supreme Court of California declining to review the denial of the Committee of Bar Examiners of the State Bar of California constitutes a final judgment under the laws of the State of California. The provisions of the Business and Professions Code provide that the only legal recourse of an applicant denied admission to the Bar by the State Committee of Bar Examiners is a Petition for Review to the Supreme Court of California. When the Supreme Court of California declined to Review on April 20, 1955, no further proceedings were available to the Petitioner in the State of California.[1]

A Petition for a Writ of Certiorari was filed with this Court and the Court accepted jurisdiction and made its Order on 21st day of May, 1956.

The Jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

---

[1]See pages 22 to 24 for further discussion of this point.

III.
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

A. The provisions of the United States Constitution involved are:

1. *The First Amendment:*

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

2. *The Fifth Amendment:*

"No person shall . . . be deprived of life, liberty, or property, without due process of law; . . ."

3. *The Fourteenth Amendment:*

". . . No state shall make or endorse any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

B. The California Statutes involved are:

1. Business and Professions Code, Section 6060. QUALIFICATIONS FOR APPLICANTS:

"To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with Section 6062 shall.

(a) Be a citizen of the United States

(b) Be of the age of at least 21 years

(c) Be of good moral character

(d) Have been a bona fide resident of this State for at least three months immediately prior to the date of his final examination . . ."

2. Business and Professions Code, Section 6064.1. ONE ADVOCATING THE OVERTHROW OF GOVERNMENT NOT TO BE ADMITTED;

"No person who advocates the overthrow of the Government of the United States or of this State by force, violence or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law. (Added by Stats. 1951, Ch. 179, Sec. 1.)"

C. RULES AND REGULATIONS INVOLVED:

1. Rules regulating admission to practice law in California (adopted pursuant to the provisions of the State Bar Act (Chap. IV, Div. 3, of the Bus. and Prof. Code) as approved by the Board of Governors of the State Bar of California, September 8, 1937):

a. "Section 6. In the conduct of investigations and upon the hearing of all matters, the committee, or any subcommittee, having jurisdiction may:

(a) Take and hear relevant evidence;

(b) Administer oaths and affirmations;

(c) Compel, by subpoena, the attendance of witnesses and the production of relevant books, papers and documents."

b. "Rule 10. Moral Character.

"Section 101. Every applicant shall be of good moral character. Investigations in reference to the moral character of applicants may be informal, but shall be thorough, with the object of ascertaining the truth. Neither the hearsay rule, nor any other technical rule of evidence, need be observed; but an ap-

plicant shall be advised of any and all information received by the committee adversely bearing on his moral character upon which a denial of recommendation by the committee is based, and he shall be given a reasonable opportunity to rebut or explain the same. The applicant shall have the opportunity of proving that he is possessed of good moral character, of removing any and all reasonable suspicion of moral unfitness, and that he is entitled to the high regard and confidence of the public."

2. Rule 59(b) of the Rules of the Supreme Court of California reads:

"[*Review of other decisions*]. A petition to the Supreme Court to review any other action of the Board of Governors of the State Bar [than a decision for disbarment or suspension], or of any committee appointed by it and authorized to make a determination pursuant to the provisions of the State Bar Act. shall be filed within 60 days after written notice of the action complained of is mailed, postage prepaid, to the petitioner, addressed to him at his last known address appearing on the records of the State Bar. The petition shall be verified, shall specify the grounds relied on and shall be accompanied by petitioner's brief and proof of service on the Board of Governors of 3 copies of the petition and the brief. Within 10 days after service of the petition, the Board of Governors may serve and file an answer and brief. Within 5 days after service of the answer the petitioner may serve and file a reply. If a review is ordered the Board of Governors, at least 20 days before the return day, may serve and file a supplemental brief. Within 15 days after service of such brief the petitioner may file a reply brief, of which 3 copies shall have been served on the Board of Governors."

IV.
QUESTIONS PRESENTED.

The questions presented are the following:

1. Whether the denial of Petitioner's application for admission to the Bar of the State of California by the Committee of Bar Examiners, based upon the newspaper articles written by the Petitioner and the political opinions, ideas and associations allegedly held by the Petitioner, constitute a denial and limitation of the free exercise of speech and press and thereby constitutes a violation of due process and equal protection of the laws under the First and Fourteenth Amendments to the Constitution of the United States?

2. Whether the denial of admission to the Bar, based upon "failure" to establish good moral character because of his alleged political opinions, ideas and associations constitutes a deprivation of a right to follow one's calling and deprives Petitioner of life, liberty, property and the pursuit of happiness contrary to the provisions of the Fifth and Fourteenth Amendments?

3. Whether the interpretation of the State Bar Act of California placing upon the applicant the burden of proof to establish that he is of good moral character and does not advocate the overthrow of the government by force and violence, as applied by Respondent, deprives Petitioner of due process and equal protection of the law under the Fifth and Fourteenth Amendments of the Constitution of the United States?

In addition to these questions initially raised in the Petition for Writ of Certiorari by the Petitioner, the Court in granting the Writ of Certiorari invited counsel

for respective parties to consider in their briefs and arguments the following issues:

1. Were Petitioner's claims under the United States Constitution duly raised before the Supreme Court of California?

2. Was the Supreme Court of California's denial of a Petition for a Writ of Review merely a refusal by that Court to exercise its discretionary jurisdiction, or is it to be deemed a disposition, "in the nature of a review" (*Salot v. State Bar*, 3 Cal. 2d 615, 617), and as such a final judgment within the meaning of 28 U. S. C., Section 1257?

3. Assuming the latter, was the determination of the Supreme Court of California based upon a rejection of claims arising under the Fourteenth Amendment of the Constitution of the United States, and more particularly, upon an evaluation of the constitutional significance of the evidence summarized under "1" on page 5 through the top of page 8 of the brief filed by the Respondents on December 8, 1955, in opposition to the Petition for the Writ of Certiorari herein?

V.

STATEMENT OF MATERIAL FACTS.

The material facts are found in the transcript of the record of the hearings before the Committee of Bar Examiners. This record contains the initial hearing before the Southern Subcommittee [R. 4-46], subsequent hearings prior to decision of the Southern Subcommittee of Bar Examiners [R. 46-96], and the further hearing held before the full Committee of Bar Examiners. [R. 96-131.]

The record establishes that Petitioner graduated from Ohio State University in 1931, receiving a Bachelor of Arts Degree. [R. 5.] He spent one year teaching American History and English Literature in the high schools of Cleveland, Ohio. [R. 105.] In 1934 he entered Ohio State University for graduate work and obtained a Master of Arts Degree in 1935. Subsequently he was appointed a Supervisor by the Department of Health of the District of Columbia. In June, 1936, he came to Los Angeles, California, where he served variously as Assistant Director of the Research Department of the Council of Social Agencies, as Director of Community Surveys for the Federation of Jewish Welfare Organizations, as a District Supervisor of the California State Relief Administration, and as Director of Social Services of the City of Hope Sanitarium in Duarte, California. [R. 5-6.]

Petitioner served in the armed forces in the United States from October, 1942 to April, 1946, at home and overseas. Upon enlisting, he was commissioned a 2nd Lieutenant in the Medical Administrative Corps and served as Commanding Officer of the Detachment of Patients, Lovell General Hospital, Fort Devens, Massachusetts. [R. 6.] He was selected to attend the Army Staff School at Washington & Lee University for training as an Orientation Officer in the Army's Information and Education program, and later served in that program in North Africa, Italy, France and Germany. [R. 105.] In his last post, with the rank of Captain, he served as Orientation Officer for the Seventh United States Army in Germany, supervising that program for over 400,000 troops. Among his duties was the editing of three Army orienta-

tion publications, which writings reflect his convictions. [R. 12-15, 18.]

In this connection, the record establishes that Petitioner was urged by the President of the City of Hope Sanitarium, for whom he was employed at the time, to secure a deferment from military service. He declined to do so [R. 19] and the reasons and motivations behind this are expressed in an article written for the National Jewish Monthly magazine, entitled "Why I Am In This Fight," which is included in its entirety as one of the Exhibits. [R. 286 ff.]

On his return to civilian life, Petitioner was active in many civic affairs and was a candidate for public office on three occasions: for the Los Angeles Board of Education in 1947 and 1949, and for the California State Assembly in 1950. [R. 105-106.] He wrote a series of articles for two Los Angeles newspapers, the California Eagle and the California Jewish Voice. [R. 11.]

After discharge from the Army, Petitioner returned to his employment with the City of Hope Sanitarium. In 1950, he entered the University of Southern California Law School and pursued his legal studies there continuously and full time until his graduation in June, 1953. [R. 105.]

On the 4th day of December, 1950, the Petitioner filed with the Committee of Bar Examiners of the State of California his application to register as a student of law. [R. 260 ff.] His petition was filed in the form required by the Committee of Bar Examiners and he complied with all requirements of the Committee of Bar Examiners relative to the study of law in the State of California.

Then, on June 29, 1953, in accordance with the requirements of the Committee of Bar Examiners, Petitioner filed a document entitled "Application for Examination for Admission to Practice Law." [R. 266 ff.] Just sixteen days prior to the Bar Examination conducted by the Committee of Bar Examiners, Petitioner was advised by the Southern Subcommittee of the Committee of Bar Examiners that he must personally appear before the Committee, although he was not at this time informed of the purpose of this hearing. [R. 2.] Petitioner appeared at a hearing on the 25th day of September, 1953, without counsel, at which time he was interrogated under oath by the Committee. Thereafter, and at the request of counsel subsequently employed by the Petitioner, Petitioner was allowed to take the Bar examination subject to further hearings to determine his fitness for admission to the Bar on the basis of good moral character.

Further hearings were held before the Southern Subcommittee of the Committee of Bar Examiners on September 9, 1953, and January 27, 1954. On the 8th day of February, 1954, your Petitioner was informed by the Southern Subcommittee of the Committee of Bar Examiners, that his application for certification for admission to the Bar had been denied. [See R. 131 for a full copy of the letter of denial.]

Thereafter, your Petitioner appealed to the full Committee of Bar Examiners, and requested a review of the proceedings of the Southern Subcommittee. Such a hearing was held on the 13th day of March, 1954; later, on the 17th day of May, 1954, Petitioner received a notice that his Petition for admission to the Bar had been denied. [For the record of this hearing see R. 96-130.]

At the first hearing, Petitioner testified to his personal background and work record as set forth hereinbefore.

The Committee immediately thereafter submitted to Petitioner twenty-one photostatic copies of articles written by the Petitioner for The California Eagle, a weekly newspaper published in Los Angeles. The Petitioner identified these articles as written by him. The Committee then submitted for identification a copy of a statement given by the Petitioner at the time he was called for a hearing before the California State Senate Committee on Un-American Activities (referred to hereafter as "the Tenney Committee"). [R. 13.]

Later the Committee members asked Petitioner, "I take, it, Mr. Konigsberg, the totalitarian form of government is repugnant to you."

"Answer: Very definitely." [R. 19.]

The hearing then proceeded with a discussion and questions by the Committee regarding the totalitarian nature of the regime in Russia, the attitude of the Petitioner towards North Korea's invasion of South Korea, the "liberation of the central European countries such as Czechoslavakia," the Stockholm Peace Petition, and several organizations before whom the Petitioner had lectured. [R. 25-28.]

The Petitioner was asked whether he was a member of the Communist Party. He declined to answer this question on the ground that it was an infringement of his rights under the First Amendment. He specifically and repeatedly stated, however, that he does not now nor had he ever advocated the overthrow of the government by force and violence. [R. 29-30.]

The Petitioner was asked, "Are you a Communist?"[2] to which he answered, "I will say no, definitely no. The only thing I would describe myself very simply as one who has read a lot, studied a lot, because as a teacher of history and political education in the army I believe strongly in the fundamental concepts of our democratic system." The Committee then noted "Your answer that you gave (earlier—when Petitioner grounded his refusal to reply on the First Amendment) was directed to the question 'Are you a member of the Communist Party?' " Petitioner answered, "Yes, and solely to that. If you want a categorical answer to 'Are you a Communist?' the answer is no."[3] [R. 40.]

The Committee then presented a witness, Alice King Bennett, who testified she knew the Petitioner as a member of a "small unit in the Communist Party" in 1941. [R. 42.] When asked whether she identified Mr. Konigsberg as the person whom she had known and "Are you certain . . . of the identification?" she responded that "There is no one else here who is the least bit familiar to me in appearance except this gentleman" (referring to Mr. Konigsberg). [R. 43.]

Konigsberg declared he did not recall knowing Mrs. Bennett. [R. 39.] Then under cross-examination at a subsequent hearing, Mrs. Bennett conceded that she had

---

[2]This question referred to whether Petitioner was a "Philosophical Communist" as against one's being a member of the Communist Party. [R. 40.]

[3]It should be noted in this connection that at a subsequent hearing, Petitioner indicated that he had erred in answering this question. He stated that the same deep personal principle which caused him to decline other questions should also have governed his answer to this question; and that if the same question were asked again he would on this same principle decline to answer it. [R. 78.]

been a member of a Communist group composed exclusively of social workers and containing all social workers in the community, but that Konigsberg (although a social worker at the time) was not a member of that group. [R. 50.] When asked "Was anything said by any person present at any of these meetings advocating the overthrow of the Government by force and violence?" Mrs. Bennett replied, "I cannot recollect any specific statements now by anybody including myself" and "I don't recollect anything he (Konigsberg) said at all or anybody else said." [R. 55-56.] And finally, in response to the question "Isn't it true the only reason you identified him was because he was the only person present in the room you had ever seen before?" Mrs. Bennett responded, "That is right." [R. 56.]

At the next session of the Committee, the Petitioner submitted materials from Army Orientation Guides and other military documents and testified that the actions he had taken as a civilian after his discharge from the Army were basically predicated on the indoctrination and materials which he had received while in the Army. [R. 58-60.]

Petitioner submitted an article originally written for the Army Orientation Program as part of an assignment at the Army Staff School at Washington and Lee University, which was later reprinted in a national magazine. In part, Petitioner stated that:

> "I want to feel free to follow certain professional and cultural interests. I know that if fascism wins all this will be impossible so I must help defeat fascism. I know I cannot do this alone . . . I want the United States of America to be a mighty democratic nation . . . I know that democracy

> can be lost, and how it can be lost. I have learned that if fascism comes here I myself will be to blame —if I have not done everything in my power to prevent it. If I do the best I can now I will not have to reproach myself later, win or lose. I feel personally responsible for my country's fate. I want to help shape America's future . . ." [R. 63-64.]

At the final hearing before the full committee of the Committee of Bar Examiners, the Petitioner was again referred to his testimony before the Tenney Committee and was asked "Is there anything about that testimony that you wish to correct in view of the present circumstances?" and he was asked, with regard to the articles in The California Eagle, whether the position taken in these articles was "still your position?" [R. 110-111.]

In response to the question "You made the statement that you have nowhere in these proceedings invoked the Fifth Amendment?" Petitioner respondent, "That is right." And the chairman of the Committee responded: "You have been consistently invoking the First Amendment." [R. 120.]

At the last session of the subcommittee, and at the prior suggestion of the subcommittee, Petitioner submitted letters directed to the Committee of Bar Examiners from prominent persons in the community attesting to the good moral character of the Petitioner. The Committee had specifically suggested that in the interest of time rather than bring witnesses before it, Petitioner secure such communications. [R. 71.] Petitioner therefore submitted letters from practising attorneys, responsible business men in the Los Angeles community, doctors, ministers, professors at universities in the City of Los Angeles, social workers and other professional persons. [R. 89-92.]

These letters are set forth in full on pages 287 to 334 of the record and include some of the following comments:

Dr. H. I. Lee wrote of Konigsberg that:

> "In my opinion I have found his moral and ethical standards to be of the highest caliber. He possesses qualities of sound judgment and great initiative. Mr. Konigsberg has impressed me as a man representing the finest ideals of Americanism and without qualification I approve his fitness for the practice of law." [R. 305.]

Rabbi Jehudah Cohen, Pacific Regional Director for the B'nai B'rith Hillel Foundations in American universities wrote:

> "I have always regarded Mr. Konigsberg as a person of exemplary character, genuine honesty and integrity and thorough reliability. I have been impressed by his intellectual capacity and achievements, his genial and outgoing personality, and the splendid atmosphere which prevails in his home and in his filial relationship." [R. 306.]

The Right Reverend Monsignor Thomas J. O'Dwyer of the Archdiocese of Los Angeles wrote that:

> "I do not hesitate to recommend him to you. I am satisfied that he will measure up to the highest requirements established for members of the legal profession." [R. 307.]

Victor S. Netterville, Instructor in Law at the University of Southern California, wrote that:

> "It is my impression that Mr. Konigsberg is a man with the courage of his convictions, but not one who holds those convictions blindly or with any but the most honest motives. He seems to hold the

Constitution in high esteem and is a vigorous supporter of Civil Rights, but it was interesting to note that despite his vigorous position, he showed a willingness to recognize the necessity from time to time of balancing the interests of the individual against the interests of society when the legislature takes action to protect society as a whole from threatened dangers. Throughout our discussions—discussions in which there was ample opportunity to voice and advocate extreme views—Mr. Konigsberg showed a wholesome willingness to learn from others and to test the validity of his views in the competition of such discussions. He indicated to me an open mindedness seemingly inconsistent with any calculated disregard of his duty as a loyal and conscientious citizen. Based solely then upon my contact with Mr. Konigsberg as a law student, I would have no hesitation in recommending him for admission to the Bar." [R. 311.]

Chauncy A. Alexander, Executive Director of the Southern California Society for Mental Hygiene, wrote that:

"In my opinion Mr. Konigsberg is devoted to the highest professional standards and principles and is forthright in his expression and support of them. . . .

"In all the professional contacts that I have had with him, he has demonstrated a high standard of integrity and ability. I have had periodic occasion to participate with him in health and welfare agency committees and he has demonstrated a devotion to democratic principles and participation." [R. 312.]

Z. L. Gulledge of the California Department of Education, Division of Special Schools and Services, Bureau of Vocational Rehabilitation, wrote that:

"In all my associations with Mr. Konigsberg, he has proved a person of unquestioned integrity and

sincerity and one who has devoted considerable time and energy to the problems of community interest. His broad professional experience has, in my opinion, been excellent preparation for the practice of law. I believe that Mr. Konigsberg will make an eminent contribution to the legal profession.

"On the basis of Mr. Konigsberg's fundamental qualities of character, I am happy to recommend him to you." [R. 316.]

Mrs. Jeanne G. Young, Director of Medical Social Service at the Cedars of Lebanon Hospital in Los Angeles, wrote:

"During the time of our association I was most impressed by Mr. Konigsberg's sincerity and integrity, both as an individual and in his professional capacity. I found him to be a person of principle conviction and willing to defend his principles even at great personal sacrifice." [R. 318.]

VI.

THE SUPREME COURT PROPERLY ASSUMED JURISDICTION.

A. Petitioner Properly Raised the Constitutional Points in Timely Fashion in the Tribunal Below.

This case falls within provisions of Section 25 of the Judiciary Act of 1789.

From earliest times, this Court has held it "altogether superfluous to require a party to set out specifically the provisions of the Constitution of the United States on which he relies for the action of the Court in the protection of his rights." (*Bridge Proprietors v. Hoboken Land and Improvement Company,* 1 Wall. 116, 68 U. S. 142. See also *Murray v. Charleston,* 6 Otto 432, 96

U. S. 432; *Columbia Water Power Company v. Columbia Electric Street Railway Light & Power Co.*, 172 U. S. 475.)

It is true that a distinction is drawn between a claim of a title, right, privilege or immunity under the Constitution and cases questioning the validity of a statute. A greater degree of particularity is required in the latter situation.

The facts in the instant case, however, are such as to qualify under either interpretation of the Judiciary Act. (See *Green Bay & M Canal Company v. Patten Paper Co.*, 172 U. S. 58; *Yazoo and Mississippi Valley Railroad Co. v. Adams*, 180 U. S. 1; *New York ex rel. Bryant v. Zimmerman, et al.*, 278 U. S. 63; *St. Louis Iron Mountain and Southern Railway Co. v. Starbird*, 343 U. S. 592.)

From the earliest stage of these proceedings, the Petitioner asserted the Constitutional rights which are now being pleaded before this Court. At the very first hearing before the Southern Subcommittee of the Committee of Bar Examiners, at which time the Petitioner appeared without counsel, he asserted in response to the question as to whether he was a Communist that ". . . the right of political opinion is protected under the First Amendment and is binding on the States." [R. 30]; and few moments later, he stated that ". . . under those circumstances, the Constitutional guarantee of free speech means nothing if it doesn't mean you can keep your views to yourself. . . ." [R. 34.]

At this very same first hearing, additional examples of Petitioner's assertion at all times of his Constitutional rights are to be found on pages 30, 31, 33, 34, 35 of the

Record; similarly at the second hearing, he again asserted his rights. [See R. 72, 76, 77, 80.]

At the hearing before the full Committee of Bar Examiners, Petitioner again specifically asserted his Constitutional rights. [See R. 100, 103, 104, 109, 111, 113, 115, 117, 118, 120, 122, 126, 127.]

While some of these assertions were in general terms, in many cases they specifically set forth the section of the Constitution claimed. Thus, Petitioner told the Committee of Bar Examiners that questioning him about his political views where other applicants for admission are not so questioned was "a violation . . . of the equal protection clause of the Fourtenth Amendment of the Constitution of the United States and Article I, Sections 11 and 12 of the California Constitution." [R. 100.] Similarly Petitioner told the Committee that its act in refusing to certify him for admission to the Bar without informing him of any findings of fact was "such an unreasonable act as to constitute both abuse of discretion and infringement of my rights under Article I, Section 1, of the California Constitution and under the Fourteenth Amendment of the Constitution of the United States" [R. 104]; and he asserted a violation of freedom of press when questioned about certain articles which he had written for the California Eagle. [R. 111.]

It must be noted that all of these hearings before the Committee of Bar Examiners were held on an informal basis although all testimony was transcribed and appears in the record of this case; nevertheless Petitioner asserted at every step of this proceeding the basic Constitutional rights for the violation of which he now asks redress of this Court.

Having been denied admission by the Committee of Bar Examiners, your Petitioner had left to him only the procedure as set forth in the State Bar Act—to request the Review of the proceedings under Rule 59(b) of the Rules of Appeal of the Supreme Court of California.

Petitioner then duly filed with the Supreme Court of California the jurisdictional document required for action by the Supreme Court. This document was entitled "Petition to Review Denial of Application of Raphael Konigsberg for Admission to the State Bar of California Under Rule 59(b) of the Rules of Appeal." [R. 1.]

The said petition is in the nature of the pleading which requests Review by the Supreme Court. It sets forth the reasons for Review by the Supreme Court of California.

Points 9, 10 and 11 specifically and without equivocation assert the violation of the Petitioner's rights under the First Amendment to the Constitution of the United States, the Fifth Amendment to the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States. [R. 3.]

Respondents in their answer denied "each and all of the allegations of paragraph VIII of the petition" and thus themselves placed at issue the Constitutional points raised by the Petitioner in his Petition to the California Supreme Court.

Respondents argued at some length in their "Brief In Opposition To The Petition For Writ Of Certiorari" that the Petitioner had waived the Constitutional points by reason of his failure to argue them at length in his brief before the California Supreme Court. Since the briefs of the Parties before the State Supreme Court are not properly a part of the record in this proceeding (see

Maryland Casualty Co. v. Jones, 279 U. S. 792), it would appear to be improper to consider any references to these briefs.[4]

B. The Denial of the Petition for Writ of Review by the California Supreme Court Was a Final Judgment Within the Meaning of 28 U. S. C. A. 1257.

The practice of law in California is regulated by the State Bar Act (Bus. and Prof. Code, Secs. 6000, *et seq.*, Stats. 1927, amended 1939). Among other things, the Act sets forth the conditions for admission to practice and it provides for the establishment of an examining committee (the Committee of Bar Examiners) having the power to examine applicants and to certify to the Supreme Court those qualifying for admission as well as to adopt reasonable rules and regulations to enable it to fulfill its statutory authority. (Bus. and Prof. Code, Secs. 6046, 6047.)

Admission to practice law is considered to be within the "inherent powers" of the Court (*Brydonjack v. State Bar,* 208 Cal. 439; *In re Lavine,* 2 Cal. 2d 328, 331), and the Act itself provides for a review by the Supreme Court of California of any refusal of certification by the Committee of Bar Examiners.[5] Hence, the legislatively

---

[4]Even assuming that the briefs were properly part of the record before this Court, Petitioner established in detail in his closing brief in the Petition for Writ of Certiorari, that the constitutional points were not waived but were implicitly and explicitly argued therein. (See Petitioner's Response to Respondent's Brief in Opposition to Petition for Writ of Certiorari, pp. 2-5.)

[5]Business and Professions Code, Section 6066, "Any person refused certification to the Supreme Court for admission to practice may have the action of the Board or any Committee authorized by the Board to make a determination on its behalf pursuant to the provisions of this chapter, reviewed by the Supreme Court in accordance with the procedure prescribed by the Court."

created Committee of Bar examiners has no direct power to admit or exclude. The function of the examiners is to investigate and recommend, not to make final orders, and the State Bar is considered an arm or branch of the court with recommendatory powers only. (*Brydonjack v. State Bar, supra; In re Shattuck*, 208 Cal. 6.) Thus, in California in matters of admissions and disbarment, the Supreme Court is a court of original jurisdiction as well as the highest court of the state in which judgment could be had.

What is the nature of a denial of a petition for review in these circumstances? Rule 59(b) of the Rules of the Supreme Court of California provides that a petition to review the action of the Committee of Bar Examiners . . . "shall specify the grounds relied on. . . ." Obviously, the petition must therefore set forth the Petitioner's grounds and contentions as to how and why the Committee of Bar Examiners acted improperly in refusing him admittance. Petitioner set forth his grounds in a petition filed under this Section. [R. 1-4.] Additionally, in this case, the State Supreme Court had before it the entire record of the proceedings before the Committee of Bar Examiners. Thus the denial of the Petition for Review was clearly "in the nature of a review" *Salot v. State Bar*, 3 Cal. 2d 615, 617, and even more—an acceptance of the Committee of Bar Examiners' recommendation that certification for admission be denied and an approval of the action of the Committee. As such it was a final judgment within the meaning of 28 U. S. C. A. 1257.

In *Atchison T. & S. F. Ry. Co. v. Public Utilities Commission*, 346 U. S. 346, 348-349, where the California Supreme Court declined to review an order of the Public Utilities Commission this Court recognized

that such a refusal to review was a final judgment when it stated:

> "The appellants presented squarely to the Supreme Court of California their contention that in the allocation of costs, these orders took their property without due process of law and are so arbitrary and burdensome as to constitute an interference with interstate commerce in violation of the Constitution of the United States. In sustaining the Commissioner's orders by denying writs of review, the Supreme Court upheld the statute as applied by the Commission, and the cases are properly here on appeal."

C. The Refusal to Review by the Supreme Court of California Was Based Upon an Evaluation of the Constitutional Significance of the Evidence.

Petitioner is well aware of the line of cases holding that where a case involves a Federal question but may have been disposed of on some independent State grounds, the Court will not assume that the matter was determined below on the Constitutional ground. (See *Crowell v. Randall,* 35 U. S. 368; *Johnson v. Risk,* 137 U. S. 300; *Allen v. Arguimbau,* 198 U. S. 149.) These cases are not in conflict with the position of the Petitioner in this case.

If the sole basis for the determination below rested on factors contravening the Constitutional rights of the Petitioner, the jurisdiction of this Court is clear. While Respondent contends in opposing this Petition that there were reasons other than Constitutional for denying the Petitioner admission to the Bar, a careful reading of the record fails to disclose such reasons.

1. The Only Reasons Indicated by the Committee of Bar Examiners for Denying Petitioner Admission to the Bar Were Reasons Which Violated Petitioner's Constitutional Rights.

The letter of the Committee of Bar Examiners to the Petitioner dated May 17, 1954 asserts only two reasons for denying Petitioner admission to the Bar: First, that the Petitioner did not sustain the burden of proof that he was possessed of the good moral character required by Section 6060(c) of the State Bar Act, and second, that he did not sustain the burden of proof that he complied with the provisions of Section 6064.1 of the Act. Respondent's carefully phrased letter of denial avoided disclosing any indication of the specific basis of its decision.

In *Local Union No. 10 v. Graham,* 345 U. S. 192, 197, Mr. Justice Burton pointed out that,

> "In a case of this kind we are justified in searching the record to determine whether the crucial finding by the state courts had a reasonable basis in evidence."

And in the same case Mr. Justice Douglas in his dissent pointed out that "great rights will be lost by the absence of findings, by the generality of findings, or by the vagueness of decrees."

A search of the record based upon which the two paragraph letter became the only "finding of fact" discloses that the questions asked of the Petitioner related only to the following points of which the examples set forth below are typical:

1. *Articles written by Petitioner for newspapers in the City of Los Angeles.*[6]

"Mr. Sterling: I assure you I don't want to get into a debate on the subject, but the thing that strikes me about the editorial line expressed in your writings in the Eagle is that it is not anti-communist, and I should think you would now realize that the communist government as it exists in Russia is a totalitarian regime and that therefore you would be *anti-communist* in your orientation of the citizen." [R. 19-20.]

"Q. And from having glanced at the article you would say that is one you might have written during that period? A. Yes.

Q. Do you believe that that is helpful education to the citizenry generally?" [R. 23.]

". . . I referred you to this editorial, 'The Gangsters, Incorporated', to ascertain whether or not you felt that this was a beneficial bit of education, something that would help America, help its citizens." [R. 24.]

". . . Now that is two paragraphs taken from your article as indicated. What I am asking you is do you feel that that is the proper approach educational-wise for a person who seeks to be a member of the Bar? I am just trying to get your personal view. I am not criticizing. I am just asking." [R. 25.]

"Mr. Konigsberg: I presume I did if that is an accurate copy of the column I wrote.

Mr. Fuller: Is that still your position?

---

[6]See "Respondent's Brief in Opposition to Petition for Writ of Certiorari" from the bottom of page 5 to the top of page 8, where respondents emphasize their reliance on the Eagle articles as "the evidence most directly relevant to the Committee's determination."

Mr. Konigsberg: How do you mean 'still my position'?

Mr. Fuller: Is that still a true statement? Is that what you would testify to be a true statement?" [R. 114.]

"Mr. Fuller: And would you make that same statement today?" [R. 115.]

2. *The alleged political views or associations of the Petitioner.*[7]

"Mr. Sterling: Don't you see some analogy between Germany's invasion of Poland and North Korea's invasion of South Korea and subsequent events with the Chinese Communist support of North Koreans? . . .

Mr. Sterling: Don't you think that the Korean business was an indication of aggression by a form of government which appears to be totalitarian?" [R. 21.]

"Q. Did you ever participate in the affairs of the California Legislative Conference?" [R. 26.]

"Q. Have you ever heard of the People's Educational Center?" [R. 27.]

". . . Who was Sidney Davidson? A. I don't know.

Q. Don't you recall Sidney Davidson? A. No, I don't. . . ." [R. 27-28.]

"Q. Mr. Konigsberg, have you ever knowingly participated in an organization which you then be-

[7]See pages 9-10 of Respondents Brief in Opposition to Petition for Writ of Certiorari.

lieved was sympathetic to the communist cause? A. No, I can't say I knowingly did that, because I don't think it would have made a great deal of difference to me if I had known one way or the other, assuming that the objectives such as those I have told about in the Army orientation program and so on, whether it might be a School Board election, and as I pointed out I was a candidate twice sponsored by the Citizens Committee for Better Education. I don't recall the specific issue arising, but if you are asking me I don't think it would have made a great deal of difference to me who was supporting the organization or the campaign, if the objective was the same, say a better School Board or whatever the issue might have been." [R. 31-32.]

"Mr. Fuller: What organizations do you presently belong to?" [R. 109.]

"Mr. Fuller: Is is your present position that Dennis should be freed from that conviction?" [R. 112.]

3. *Testimony given by Petitioner before a State legislative committee.*[8]

"Mr. Konigsberg: No, sir, I haven't re-read it (referring to his testimony before the Tenney Committee). I had forgotten about it until Mr. Freston referred to it in the first hearing. I don't recall what is in it. I have a general idea, yes.

Mr. Fuller: Do you have any reason to change your testimony, your position you took in that? Is that still your position, whatever you may have said at that time?" [R. 109-110.]

---

[8]See pages 8-9 of Respondents' Brief in Opposition to Petition for Writ of Certiorari.

"Mr. Fuller: Is there anything about that testimony that you wish to correct in view of the present circumstances?" [R. 110.]

"Mr. Fuller: The position evidenced there would be your position at present?" [R. 110.]

Nowhere in the record is there any single question asked which relates in any manner, remote or otherwise, to any normal or past definition of "moral character."[9]

Within a few moments after the commencement of the first hearing Petitioner was handed twenty-one photostatic copies of the California Eagle [R. 8] and questioned about the articles; and from this beginning the questions continued almost exclusively in the political realm. Petitioner was not questioned as to his honesty, his ethics, or his integrity. Obviously, the Committee was satisfied that in these areas Petitioner's character was beyond question.

Since the rules of the committee itself specifically require it to give notice to the Petitioner of the grounds upon which it is denying him admission to the Bar, it can only be concluded that the Respondent contends that the questions asked of Petitioner at the hearings in some manner constituted putting him on notice of the grounds upon which it planned to base its decision.

[9] *Funk and Wagnall* New College Standard Dictionary of the English Language, New York and London, 1947, defines "moral" as "pertaining to character and behavior from the point of view of right and wrong, and obligation of duty; pertaining to rightness and duty in conduct. (2) Conforming to right conduct; actuated by a sense of the good, true and right; good; righteous; virtuous. (3) Concerned with the principles of right and wrong; ethical; as, moral philosophy, moral values . . . .", and it should be noted that Roget's International Thesaurus, New Edition (1946), shows as synonymous for "moral"—"ethical, upright, virtuous."

An analysis of the first hearing indicates that approximately[10] one hundred sixty-one questions were asked of the Petitioner. Of these 51 or 31% were about his newspaper writings; 20% about his appearance before the Tenney Committee; 25% about his political beliefs generally; 20% about other organizations to which he may have belonged (all in the political area), and only about 4% of the questions inquired into his army record or his personal background. Not a single question was asked about his honesty, ethics, morality, integrity or other characteristic relating to the practice of law.

It thus becomes clear that while the Respondent asserts that it reached its decision on State grounds because Petitioner had not sustained his burden of proof, nevertheless, the questions which were designed to determine if Petitioner met his burden of proof were all questions which could not properly have been asked and which contravened the Constitutional rights of the Petitioner.

The basic principle involved here was enunciated in *Kaukauna Water Power Company v. The Green Bay and Mississippi Canal Company,* 142 U. S. 254. In this case, the Court pointed out that:

> "Notwithstanding the inhibition of the Constitution is not distinctly put in issue by the pleadings,[11] nor directly passed upon in the opinion of the Court, it

---

[10]Obviously, the nature of the hearing and the exchanges which took place between questioners and witness makes it impossible to have an exact count of questions. The figures given here, however, are substantially correct, and while no count was made of the three other hearings, the nature of the hearings was such as to indicate that no substantial difference in the percentages would occur in these hearings.

[11]Which is not the situation here.

> is evident that the Court could not have reached a conclusion adverse to the defendant company without (a finding) . . . . which is equivalent to saying that it had not been deprived of its property without due process of law."

Thus, the Court pointed out that the adjudication of the question *necessarily* involved the disposition of a Federal question.

To the same effect is *Schlemmer v. Buffalo, Rochester & Pittsburgh Railway Co.*, 205 U. S. 1, 11, where the Court pointed out that:

> "If the question is duly raised and the judgment necessarily, or by what appears, in fact involves such a decision, then this Court will take jurisdiction, although the opinion below says nothing about it."

In the Konigsberg case we have no written decision of the Supreme Court. But we have a record which contains only questions which bring into play the Constitutional rights of the Petitioner. This Record was before the Supreme Court of California and that Court approved the actions of the Committee of Bar Examiners when it declined to review the decision. Thus, because the Committee of Bar Examiners in declining to recommend the admission to the Bar of the Petitioner used vague language which did not disclose the findings upon which they concluded to deny Petitioner admission to the bar this very vagueness cannot be called upon to prevent the Court from looking behind the language of the Committee to the real facts as they appear in the record.

2. Any Possible Independent State Ground Asserted Herein Is Not Substantial or Sufficient.

It has been asserted that if there are independent State grounds, the Supreme Court will not take jurisdiction. The cases are very clear, however, that if the independent ground was not a substantial or sufficient one, it will be presumed that the tribunal below based its judgment on the Federal question, and this Court will then take jurisdiction.

Williams v. Kaiser, 323 U. S. 471;
Johnson v. Risk, 137 U. S. 300;
Lawrence v. State Tax Commission, 286 U. S. 276.

While it is the position of Petitioner that in this case there is no independent State ground which can be separated in any manner from the Constitutional grounds asserted by the Petitioner herein, it is also urged that where the Constitutional point raised involves the basic freedoms of speech and press, the examination of the alleged State grounds by the Court is more critical.

In *Craig v. Harney,* 331 U. S. 367, 373, the Court pointed out that:

> "In a case where it is asserted that a person has been deprived by a State Court of a fundamental right secured by the Constitution, an independent examination of the facts by this Court is often required to be made." (See also, *Pennekamp v. Florida,* 328 U. S. 331, and *Milk Wagon Drivers Union of Chicago Local 753 v. Meadowmoor Dairies, Inc.,* 312 U. S. 287, 293.)

In the *Meadowmoor* case, *supra*, the Court pointed out, at page 293, that:

> "Still it is of prime importance that no Constitutional freedom, least of all the guarantee of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this Court has the ultimate power to search the records in the State Courts where a claim of Constitutionality is effectively made."

In the present case, there was no decision by the State Supreme Court, and the basis upon which the Supreme Court of California (with three Justices voting to review) declined to review the case can only be determined by an examination of the record below. Nowhere in the record below is any matter raised upon which this decision could have been predicated except upon those matters relating to the political, social, and economic views of the Petitioner as evidenced by his written and spoken statements.

There has been some suggestion in the proceedings below that it is the position of the Respondent that it was not Petitioner's answers to the questions but rather his failure to answer certain of the questions upon which they based their decision.[12] It would appear that the Respondent argues from this point that no constitutional issue is raised. Respondent, in making this argument overlooks the nature of the questions which remained unanswered. Each such question delved into the alleged beliefs, opinions and associations of the Petitioner. Had

---

[12]The specifications of the "evidence most directly relevant to the Committees' determination etc. . . ." in Respondent's Brief at page 5 ff. would throw doubt on this argument as being the true basis of the Respondent's action against the Petitioner.

the Petitioner responded to these questions, it is submitted that the Committee of Bar Examiners could not have based its denial upon the answers so given. If the answers could not properly be considered by the Committee, it is hard to understand how the failure to answer the questions could be placed in a different category.

In the light of this record, one searches in vain for a substantial state issue sufficient to defeat the jurisdiction of this Court.

VII.

SUMMARY OF ARGUMENT.

Fundamentally, Respondent justifies its conduct below upon the theory that admission to the practice of law is merely a beneficent privilege, subject to the plenary powers of the State. On this record, Respondent apparently believes that applicants for admission to the Bar may be denied relief for any reason or for no reason at all without recourse to the protective guarantees of the Federal Constitution. The notion that admission to the practice of law is no more than a privilege extinguishable at uncontrolled discretion of state officials flows from the facile generalization that there is no constitutionally-protected right to pursue the calling of a lawyer.

The real issue in this case however, is this: Has the Petitioner been deprived of his rights without due process of law and denied the equal protection of the laws?

The sole ground for denial of Petitioner's application is the allegation that he did not sustain the burden of

proving that he was a person of "good moral character" and that he had complied with the provisions of the state law barring persons who advocate the overthrow of the government "by force and violence or other unconstitutional means." California has not denied on this record that Petitioner is able to take an oath to support the Constitution. The State does not claim that Petitioner is not adequately versed in the law, that he is untrustworthy or that he could not properly represent his clients in the courts. No claim of prior malfeasance or misfeasance is made against Petitioner. It is not claimed that Petitioner was proved to have advocated the overthrow of the government in any manner, and the record here contains his disavowals and affirmative and undisputed proof of his condemnation of such advocacy. It is not claimed that any opinion or association of Petitioner's past or present offended the criminal law, nor in this record can it be disputed that Petitioner's refusal to answer certain questions concerning his opinions, beliefs and associations were based solely on conscientious objection to the questions as violative of his constitutional rights.

When California imposes political tests upon those who seek to pursue the private practice of the law it must offend the "equal protection" clause of the Fourteenth Amendment.

It is, of course, now established that the guarantees of the First Amendment are subsumed within the provisions of the Fourteenth Amendment. In this connection, it should be noted that the operational standards fixed by

the State are such vague elements as "burden of proof" and "moral character." As construed herein, these standards sweep within their ambit activities that in ordinary circumstances constitute an exercise of freedom of speech and assembly. Hence they act as an overhanging threat to free discussion and permit the punishment of the fair use of the right of free speech. Moreover, aside from questions of ambiguity, compulsion to disclose one's opinion and beliefs as a condition for exercising a fundamental liberty, offends provisions of the Bill of Rights.

Still another question which must be answered is whether Petitioner has not been deprived of his liberty without procedural due process of law. *As applied herein,* the standard of "moral character" does not appear reasonably related to professional fitness or the sound administration of justice. There is nothing in the record that reflects upon Petitioner's honor or character or his fitness for the confidence and trust which attend both the relation of attorney and client and the practice of law before the courts. His conscientious objections to intrusions into his opinions and beliefs cast no shadow on his moral character, otherwise overwhelmingly established in this record. In these senses, Petitioner did nothing which warranted exclusion from his chosen calling to protect clients, courts or the public.

The long and short of the matter is that Petitioner has been denied admission to practice law in California by a judgment in a judicial proceeding which involves a case or controversy cognizable by this Court. A Federal right secured by the First, Fifth and Fourteenth Amendments has been violated by the action of the State through its judicial arm.

VIII.
ARGUMENT.

A. The Right to Practice Law Is a Right of Liberty and Property Protected by the Fourteenth Amendment.

It should be noted at the outset that Petitioner herein commenced the study of law at the age of thirty-nine and stood ready to take the examination required by law as the primary prerequisite for admission to the Bar at the age of forty-two. He was a mature man who commenced the practice of law because of a firm conviction that he could contribute to society in this manner. He filed with the Committee of Bar Examiners all of the requisite documents stating fully and truthfully all of the facts of his life as required of all applicants who take the Bar examination. For three long years this information remained securely in the files of the Committee of Bar Examiners, awaiting the completion of his studies, before the Committee raised the question of his moral fitness. To be sure, the question was not raised after passage of the Bar examination—it was raised approximately sixteen days before the examination at the time when the studies of the law student reached a climax. At this critical time the Petitioner was called in for questioning by the Committee of Bar Examiners with regard to his "moral character" and only after intercession by counsel was Petitioner allowed to take the Bar examination before final resolution of the issue of his good moral character.

Despite the pressure of this proceeding already commenced, Petitioner passed the Bar examination and thereby fulfilled all of the educational qualifications required of other prospective admittees to the Bar.

In addition, Petitioner submitted a series of letters which are to be found in the Record of the case on pages 287 through 334. These letters are from attorneys-at-law, businessmen, medical practitioners, members of the ministry, professors at law school, social workers and other professionals and individuals. These letters testify to the good moral character of the Petitioner at every phase and stage of his mature life.

Additional letters of this type were not and are not required of the average and ordinary admittee to the Bar. Despite the wide scope of reference and the highly laudatory nature of these letters, the Committee of Bar Examiners asserts that Petitioner has not met his burden of proof.[13]

The Supreme Court in circumstances somewhat similar to the instant case has indicated that there are constitutional restrictions on the right of States to deny admission to the Bar. In the case of *In re Summers*, 325 U. S. 565, 571, the Court pointed out that:

> "Of course under our Constitutional system men could not be excluded from the practice of law, or indeed from following any other calling, simply be-

---

[13]It should be noted that Petitioner offered to bring the witnesses to testify in person on his behalf before the Committee [R. 70-71] but the Committee requested that the time of the Committee could be saved by submitting letters instead [R. 70]. In view of this, it ill behooves the Committee to now suggest as it does in its "Brief In Opposition to Petition for Certiorari" (p. 10) that the "persuasiveness (of the letters) was limited since none of them were directed to, or showed any knowledge of, the specific matters causing the Committee to have doubts covering Petitioner's qualifications."

cause they belong to any of our religious groups whether Protestant, Catholic, Quaker or Jewish. ."[14]

While in the *Summers* case the Court did not require admission to the Bar, nevertheless the very granting of the Writ of Certiorari in that case and the examination of the case on its merits was a recognition that the right to admission was a Constitutionally-protected right and not a mere privilege.[15]

---

[14]The possibility of a state denying admission to the bar for reasons which today would jar the sensibilities and the mores of our time is verified in *In re Goodell*, 39 Wis. 232, where admission to the bar was refused to a woman solely on the basis of her sex.

[15]A striking response to the contention that the particular matter sought for is not a right but merely a privilege is to be found in a 1955 Wisconsin case dealing with a community placing restrictions on tenancy in government-owned housing projects. In *Lawson v. Housing Authority of City of Milwaukee*, 270 Wis. 269, 70 N. W. 2d 605, the Supreme Court of Wisconsin held:

> "If the state, or one of its political subdivisions, were to pass a criminal statute or ordinance making it unlawful for a person to belong to any organization advocating political or economic change or reform, such enactment would at once be held unconstitutional as violative of the liberties of citizens guaranteed by the First and Fourteenth Amendments of the United States Constitution. The holding out of a privilege to citizens by an agency of government upon condition of non-membership in certain organizations is a more subtle way of encroaching upon constitutionally protected liberties than a direct criminal statute, but it may be equally violative of the Constitution. Surely a citizen, to whom such a privilege is denied on the sole basis of membership in some organization, should be accorded the right to test the constitutionality of such regulation in Court. If a precedent should be established, that a governmental agency whose regulation is attacked by court action can successfully defend such action on the ground that the plaintiff is being deprived thereby only of a privilege, and not of a vested right, there is extreme danger that the liberties of any minority group in our population, large or small, might be swept away without the power of the courts to afford any protection."

See also, *Chicago Housing Authority v. Blackman*, 4 Ill. 2d 319, 122 N. E. 2d 522, to the same effect.

In *Cummings v. Missouri*, 71 U. S. 277, at 321, 322, and *Ex parte Garland*, 71 U. S. 333, at 378, 379, the Court further indicated that the right to practice law is encompassed within the "certain inalienable rights to life, liberty and the pursuit of happiness" which lie at the root of our political institutions.

A similar result has been reached in cases dealing with other professions.

In *Dent v. West Virginia*, 129 U. S. 114, dealing with the right to practice medicine, the Court held that

> "it is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition. This right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are open to everyone on like conditions."

Similarly in *Allgeyer v. Louisiana*, 165 U. S. 578, 589, the Court said:

> "The liberty mentioned in that amendment . . . is deemed to embrace the right of the citizen to be free in the enjoyment of all of his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation . . ."

It is well established that the courts will protect the right of individuals to engage in a lawful calling or profession in the face of infringements claimed to violate the due process clause of the Fourteenth Amendment, even though in many of these cases the callings are not

of the stature of the practice of law. (See *Yick Wo v. Hopkins,* 118 U. S. 356 (operation of a laundry); *Mayflower Farms v. Ten Eyck,* 297 U. S. 266 (price fixing of milk); *Smith v. Texas,* 233 U. S. 630 (railway brakeman); *Liggett v. Baldridge,* 278 U. S. 105 (pharmacy); *Missouri ex rel. Hurwitz v. North,* 271 U. S. 40 (medicine); *Semler v. Oregon State Board of Dental Examiners,* 294 U. S. 608 (dentistry).)

Nevertheless, conceding for purposes of argument only, that being admitted to the practice of law is a privilege, the cases are legion establishing that this privilege may not be granted or withheld on conditions which violate constitutional rights or require the surrender of constitutional rights.

This doctrine was clearly stated in *Frost & Frost Trucking Company v. Railroad Commission of California,* 271 U. S. 583, at 593:

> "It would be a palpable incongruity to strike down an act of state legislation which, by words of expressed divestment, seeks to strip the citizen of rights guaranteed by the federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold."

The significance of the *Frost* case to our case at bar is that in effect, the State Bar is saying to prospective admittees, and in particular to Konigsberg, that the privilege of practicing law will be granted only upon condition that the admittee establishes that he does not and has not held views of a political, social or economic nature contrary to some vague standard existing only in the minds

of the members of the Committee of Bar Examiners. In the case of Konigsberg this becomes an *ex post facto* application in that he was informed of this undefined standard only at the very moment when he was at the threshold of the Bar after having completed all other requirements of both a moral and an educational nature. To other admittees who may follow in the knowledge of the ruling in the Konigsberg case it says that prospective lawyers must take care not to hold any unusual political views for fear that when the time comes for the state to grant to them the "privilege" of practicing law, it may be withheld by reason of their past political, economic or social views.

It is submitted that the practice of law is a right, but even deeming it a privilege, the state may not restrict the exercise in a vague or arbitrary manner. (See also, *Near v. Minnesota*, 283 U. S. 697; 720; and *Hannegan v. Esquire, Inc.*, 327 U. S. 146, 155.)

B. When Concepts Such as "Good Moral Character" Are Interpreted to Include Within Them Political Beliefs, Opinions and Associations, They Violate Petitioner's Rights Under the First and Fourteenth Amendments.

Petitioner concedes the propriety of examining the good character of the prospective admittee to the Bar. Petitioner does assert, however, that good moral character has had a traditional and generally identifiable meaning by which it has been interpreted in the courts of the State of California and elsewhere in the past.

It is perfectly proper to determine that a prospective lawyer shall be honest, truthful, trustworthy and maintain integrity in his relations with his fellowmen. These

are qualities which have been established in numerous decisions in the Supreme Court of the State of California, but never prior to this case had the Committee of Bar Examiners denied admission to the Bar of a prospective admittee by reason of his alleged political, social or economic writings or expressions of opinion.[16]

Scholars have long sought for some definitions of moral character which will help to inform applicants to the Bar or neophyte students of these qualifications at an early stage. Thus, as was stated in a recent article in the Detroit Law Journal:

> "We have been searching for some basic information on the establishment of good moral character. We find precious little which is of any practical use to either applicants or character and fitness committees." ("Considerations on Determination of Good Moral Character" by John R. Starrs, 18 Univ. of Detroit L. J. 195 (1955).)

It has been suggested by some that the basis for determining good moral character is to examine the current moral norms and mores of society. Such a basis may be satisfactory so long as we remain in the true area of personal morality insofar as it relates to the practice of law. But when we move beyond the human characteristics of basic honesty, integrity, and ethics, in establishing the good morality required by society of the prospective lawyer, we allow a small group of Bar examiners, acting for and on

---

[16]While the Konigsberg case was pending before the Supreme Court of California, the case of *Brooks v. The State Bar* was denied review by the Supreme Court of California, with three justices voting for a review. (October 6, 1954.) The *Brooks* case also dealt with certain political issues but was not on all fours with this case.

behalf of the State, to arbitrarily impose their personal mores and their personal concepts of right and wrong in the political area as standards of "good moral character." We thus predicate good moral character not on the personal character of the applicant to the Bar, but upon his political beliefs and opinions and, as the next step, the characteristics of a group in whose activities he is accused of participating. The applicant for admission to the Bar is thus required to adhere to (and for that matter to have adhered to at all times during his life) vague standards of political morality in periods of changing moralities; and we may deny admission to the bar for past adherence to beliefs towards which public attitudes have altered since the beliefs were held. We ask in effect that the applicant resist from holding or expounding social, economic or political views which differ from those held by the majority of the community for fear that at some time in the future these views may become sufficiently repugnant to a large enough portion of the community (or small and vocal portion of the community) to justify a Committee of Bar Examiners in stating that he is therefore not morally fitted for the practice of the law.

This determination in the arena of opinions, beliefs, and ideas can only be an arbitrary determination by the group which happens to wield authority as the Committee of Bar Examiners at any particular time; and while this arbitrary determination may seem to conform to the views of a large number of persons or even to the vast majority of persons in the community, it does not conform to the requirements

of the First Amendment as incorporated in due process clause of the Fourteenth Amendment.[17]

Mr. Justice Jackson, considering a related problem in the case of *Jordan v. George*, 341 U. S. 223, 242, pointed out the dangers inherent in the doctrine adopted by the Committee of Bar Examiners:

> "We usually end up by condemning all that we personally disapprove and for no better reason than that we disapprove it. In fact what better ground is there? Uniformity and equal protection of the laws can come only from a statutory definition of fairly stable and confined bounds."

The author of the Detroit Law Review article *(supra)* points again to the inherent danger in applying standards such as this to the practice of law. He states that:

> "But if we say that good man must be a law abiding traditionalist, do we mean that there must be uniformity of mind? If so how much? Is that uniformity which comes from adjustment of the individual to the group in which he lives a prerequisite to being good? Is it a prerequisite to being a lawyer? If complete adjustment should be reached, would we

---

[17]An unsigned article in 54 Northwestern University Law Review 94 (1955), points out that "serious administrative difficulties arise in deciding where to draw the line in cases where it is attempted to deny a candidate admission to the Bar on the basis of political thoughts or affiliations or because of a refusal to answer political inquiries. It is difficult to see how such elusive concepts as disloyal or doubtful loyalty can be used as a basis for denying admittance to the Bar."

not be well on the road to the Orwellian state so terrifyingly described in 1894."[18]

Yet when the Committee of Bar Examiners sets up as a standard and determines that a group of articles written by the Petitioner in publications legally and regularly published in a large community in the State, or that statements made before a Congressional Committee,[19] or that alleged adherence to a political party many years before[20] indicate that an applicant is not a person of good moral character, are we not relegating to the Committee of Bar Examiners the right to proscribe what is proper and

---

[18]The same article points out that:

"We are accustomed to think of the signers of the Declaration of Independence as patriots; the British Government under George III had other ideas, and unquestionably the signers were not law-abiding so far as the British were concerned. Certainly in a narrow sense they were not traditionalists. Yet who today will say that they were not good men and for the matter of that, who today will say that the law abiding loyalists of the time were not good men also. . . . Who says we can settle these things by majority vote." (Detroit Law Review, *supra.*)

[19]Of the Tenney Committee, Edward L. Barrett, Jr., Professor of Law at the University of California wrote: "On the whole, it appears that the hearings of the Tenney Committee were not conducted in a manner calculated to permit rational findings of fact. A general view suggests that persecution rather than investigation was the theme." (The Tenney Committee, Cornell University Press, Ithaca, p. 44.)

[20]With complete abondon and without regard to the introduction of evidence, the Committee of Bar Examiners arbitrarily and capriciously damns the articles written by Petitioner as "consistently following the Cmmunist Party line." That the Committee places its major emphasis on its own interpretation of these articles is clearly indicated by the suggestion that "Respondents hope that members of this Court will have a chance to examine the articles themselves . . ." and then proceed to quote extensively from the articles. (See Respondent's Brief in Opposition to Petition of Certiorari pp. 5-8.)

orthodox in thought and deed? Are we not allowing the Committee to determine what is morally acceptable and what is not morally acceptable?[21] (See *West Virginia State Board of Education v. Barnette,* 319 U. S. 624.)

The bounds within which Committees of Bar Examiners may operate has never been strictly defined. However, in *Ex parte Secombe,* 60 U. S. 913, Chief Justice Taney pointed out that:

> "And it has been well-settled by the rules and practice of common law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney, and counsellor, and for what cause he ought to be removed. The power, however, is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice or personal hostility, but it is the duty of the court to exercise and regulate it by a sound and just judicial discretion whereby the *rights and independence of the Bar may be as scrupulously guarded* and maintained by the court, as the rights and dignity of the court itself." (Emphasis added.)

One may ask in vain for the relationship between the political views of an applicant and his qualifications to practice law. We are not dealing here with an employee of a governmental body who deals with secret information

---

[21] Another dangerous aspect of allowing political tests to make any inroad into any phase of the legal profession is illustrated by an item appearing in the New York Times on July 31, 1956:

> "Confirmation of Judge Bigelow (as member of the Board of Governors of Rutgers University) was denied last night solely because as a lawyer he represented a teacher who invoked the Fifth Amendment while testifying before the House Committee on Un-American Activities." (P. 1.)

vital to the security of the nation. (*Cole v. Young,* 351 U. S. 536.) We are dealing here with a free and independent profession, a profession predicated on the principle that all who need may find lawyers fearlessly prepared to defend the right of every citizen in the nation.

If we commence by restricting for political reasons the very practice of law, we will have destroyed at the foundation this basic principle of American life. Reasonable restrictions on education—Yes. Reasonable restrictions against dishonesty—Yes. But only restrictions which bear a reasonable relationship to the ends sought to be attained—the preservation of high standards of ethics and integrity in the legal profession.

Certainly the Court would strike down as violative of Constitutional rights a restriction which in a state said that no Negro could practice law; or that no person who was a member of the National Association for the Advancement of Colored People or the Urban League could practice law, or that persons who supported the integration decision of the Supreme Court were not of good moral character. Such restrictions would be held to deny equal protection and would be held violative of due process under the First and Fourteenth Amendments. Yet the qualification established here by the California Committee of Bar Examiners is in its essentials in no way different. Clearly, the application of the State Bar Act of California and the interpretation of good moral character as applied by the Committee of Bar Examiners in this case is unconstitutional. (See *Lawton v. Steele,* 152 U. S. 133; *Smith v. Texas,* 233 U. S. 630; *Meyer v. State of Nebraska,* 262 U. S. 390; *Korematsu v. United States,* 323 U. S. 214; *Missouri ex rel. Gaines v. Canada,* 305 U. S. 337; *Chaires v. City of Atlanta,* 164 Ga. 755.)

C. The Denial to the Petitioner of the Right to Practice Law Although Otherwise Qualified Because of Newspaper Articles Written by Him and His Views Otherwise Expressed Constituted a Denial of Due Process and the Equal Protection of the Law.

The act of the Committee of Bar Examiners in applying political tests determining whether Petitioner was of good moral character constitutes an act of the Committee with the full force of State legislation and therefore within the protection of the Fourteenth Amendment.

In *Smith v. Texas,* 233 U. S. 630, at 636, the Court pointed out that:

> "Life, Liberty, property and the equal protection of the law grouped together in the Constitution are so related that the deprivation of any one of these separate and independent rights may lessen or extinguish the value of the other three. Insofar as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords to those who are permitted to work."

It is not many years since the court in *Ex rel. Gaines v. Canada,* 305 U. S. 397, insisted that a state did not have the right to deny a Negro the right to attend a law school in order to acquire the skills and learning to practice a profession of his own choosing. Certainly implicit in the more recent decisions involving the school segregation cases (*Brown et al. v. Board of Education of Topeka,* 347 U. S. 483) was the principle that by the denial of the equal right to attend non-segregated schools, Negro children were denied the equal right to qualify themselves for such professions or callings as they saw fit.

But the principle that it is a denial of equal protection of the laws to exclude a person from a state law school because he is a Negro protects the right to practice law at only the first stage. It would indeed be a hollow victory if the Constitution enabled a man to fit himself to become a lawyer by insisting on his equal right to attend a law school if, having acquired the necessary legal knowledge and passed all of the other qualifications for the practice of law, it becomes possible to deny him the right to practice law by arbitrary and unequal application of the law relating to qualifications for admission to the Bar. Obviously, the right to acquire an education and to go to school must go side by side with the right to practice a chosen profession after having fitted and qualified oneself for that profession. In the Konigsberg case, the applicant filed his notice to the Committee of Bar Examiners fully three years before he asked for permission to take the examination. True, he was allowed without discrimination to attend law school; but, having completed his studies and met all of the other qualifications of the Committee of Bar Examiners, he was entitled without discrimination to become a member of the Bar and practice the profession of his choosing.

An Ohio Court faced with a not dissimilar situation approached the problem with a perspective which is commendable and which more properly respects the Constitutional limitations on the right to restrict the practice of law. In the case of *In re Burch*, 73 Ohio App. Rep. 97, 54 N. E. 2d 803, the State of Ohio endeavored to disbar one Frank Burch as being guilty of misconduct and unprofessional conduct by reason of the fact that he had failed to register as an agent of the German government

and conducted propaganda on behalf of that foreign government. The Court concluded that:

> "No law forbade what he did. The only wrong charged against him was that by reason of his relations with the German Consul he should have registered. Had he done that no act of his was of such character as could not have been lawfully performed by any American citizen.
>
> "Such failure to register had in it no element of moral turpitude." (At p. 103.)

One of the concurring judges in the *Burch* case pointed out further that:

> "It must be at all times remembered that the right of free speech is a guarantee embodied in the Constitution of the United States and while this writer vigorously dissents from some of Mr. Burch's political views and activities as revealed by the record, nevertheless his right to express his views must be respected by the court so long as his activities do not contravene the laws of the state and nation. The record does not reveal any such contravention." (At pp. 106-107.)

In the *Burch* case it was obvious that the effort to disbar Burch was based upon the fact that he contravened the political mores of the period by supporting the German Government and acting as its agent.[22] In the con-

---

[22]Another concurring judge wrote:

> "Mr. Burch unquestionably had a constitutional right to try to influence public sentiment against war, and to do each and everything which the record shows he did do. . . . The propriety of (his) doing so is a matter of opinion and is not a violation of law nor a matter for which he could be called to account in a disbarment proceeding." (Pp. 105-106.)

text of the time, this was a heinous offense against the political morality of the community. Similar efforts were made to disbar persons of I. W. W. persuasion and Socialists in the period of World War I,[23] but in the sober second thought of history, we have looked back and recognized that we were simply submitting to the hysteria of the time and that the basic concepts of morality which stand the tests of time as the proper tests for admission to the bar, were not properly applied in these political cases and that our basic constitutional principles were seriously bruised from the impact.

The Court herein is not called upon to determine that local Committees of Bar Examiners are not empowered to thoroughly examine the fitness and morality of Petitioners who seek admission to the Bar. We are simply called upon here to determine that when California interpreted its requirement of good morality in such a manner as to exclude Petitioner, not by reason of traits of character directly related to the practice of law, but rather based upon his political opinions, beliefs and associations, it was setting up a standard which violated due process of law and denied Petitioner the equal protection of the law.

---

[23]See *In re Clifton*, 33 Idaho 614, 196 Pac. 670 (1921); *In re Arctander*, 110 Wash. 296, 188 Pac. 380 (1920). See also Zachariah Chafee, Jr., *Free Speech in the United States* for a full discussion of this period and other periods in which the American people have given way to hysteria in their application of political tests to constitutionally protected areas of freedom of speech and press. (Chafee, Harvard University Press, Cambridge, 5th printing, 1946.)

D. The Procedures Adopted by the Committee of Bar Examiners Constituted a Denial of Due Process.

Petitioner here is not concerned with the factual interpretation of the statutes involved, since this is a matter for the State of California. We are concerned only with the question of whether the statutes, as applied by the Committee of Bar Examiners and approved by the Supreme Court of California (by failure to review the decision of the Committee of Bar Examiners) and as related to the Petitioner herein, violate the Fourteenth Amendment.

The very rules of the Committee of Bar Examiners restrict the Committee or Subcommittees of the Committee of Bar Examiners to the taking of "relevant evidence." The Committee is given a wide latitude in the area of investigation in that it is not to be bound by the hearsay rule or other technical rules of evidence. But the Committee is bound by a rule which states "but an applicant shall be advised of any and all information received by the committee adversely bearing on his moral character upon which a denial of recommendation by the committee is based. . . ." An examination of the record in the instant case shows that the Committee violated its own rules and has placed the Petitioner herein in the position before this Court of guessing as to the basis of the denial of rights, or assuming (as the Petitioner of necessity does throughout this brief) that the questions asked present the sole basis for this denial. (This assumption is supported by Respondent's Brief filed prior to granting of certiorari.)

The rules of the Committee itself call for informing the Petitioner of all information adversely bearing on his

moral character; yet the record shows that the denial by the Committee in this case was predicated only on two vague grounds—that the Petitioner had failed to meet his burden of proof that (1) he was of good moral character and (2) he did not believe in the overthrow of the Government by force and violence. At no time was he informed wherein he had failed to meet his burden of proof nor was he informed in what particulars he might meet this burden of proof.

Petitioner was asked hundreds of questions in the course of the proceedings. At no time was he informed which were the basic questions which must be answered in order to qualify; at no time was he informed which were preliminary questions; at no time was he ever informed that if he failed to answer a specific question he could not be admitted to the Bar. Lacking this information, Petitioner was required to assume the impossible burden of violating his personal principles and accepting a violation of his constitutional rights or submitting to arbitrary requirements of the Committee the full import of which was never made clear to him.

The Petitioner established his opposition to the doctrine of force and violence by his own testimony; his record in the community as a civic leader, and even in the newspaper articles introduced by the Respondents. [See R. 173.] Having established these facts, what further could the Petitioner bring forward to the Committee to meet his burden of proof that he did not believe in force and violence? The Committee never indicated at any time what it expected of him; it presented no evidence to show any possible action in the entire lifetime of the Petitioner indicating a belief in the overthrow of the Government by force and violence; it brought no witnesses before the

Committee testifying as to any such belief on the part of Petitioner; and yet it ends the hearings with a single paragraph statement that he has failed to meet his burden of proof.

It is submitted that in applying the requirement of burden of proof on the Petitioner in this manner, the Committee has been arbitrary and has applied its rules and procedures in such a manner as to deny the Petitioner his constitutional rights under the Fourteenth Amendment.

E. Petitioner Was Denied Due Process of Law When the Committee of Bar Examiners Retroactively Established Political Tests for Admission to the Bar.

It has already been noted that while there are numerous cases in the State of California wherein applicants for admission to the Bar have been denied admission and have sought review before the Supreme Court of California, in no single one of the reported cases was the Petitioner denied admission to the Bar by reason of his political views. Thus in *In re Garland,* 219 Cal. 661, 28 P. 2d 354, the applicant had been convicted of forgery prior to his application; in *In re Hovey,* 7 Cal. Unrep. 203, 81 Pac. 1019, the applicant had failed to disclose that disbarment proceedings had been instituted against him in the state of his former domicile and that disbarment proceeding involved an element of criminality; in *In re Wells,* 174 Cal. 467, 163 Pac. 657, the applicant had obtained a loan by falsely misstating material facts and then committed a fraud upon the court in a prior proceeding; in *Spear v. State Bar of California,* 211 Cal. 183, 294 Pac. 697, the applicant failed to disclose criminal charges preferred against him and had thereby made false statements on the affidavits accompanying his appli-

cation for the right to practice law in California. In these and in numerous other cases, the Supreme Court of California had consistently stated that the Committee of Bar Examiners could properly deny admission to the Bar to prospective applicants on the basis of their failure to establish good moral character where the applicant had previously been convicted of a crime, acts involving moral turpitude or had committed a fraud upon the Committee, but in no single case had the Committee of Bar Examiners ever denied a person admission by reason of his political opinions, writings, or associations, or his economic or social views, or his attitude towards committees of Congress..

This interpretation of the meaning of good moral character had long been established therefore in the laws of the State of California. No new legislation was passed prior to or subsequent to the commencement of the study of law by this Petitioner.[24]

This Petitioner was therefore entitled to assume that the Committee of Bar Examiners would not impose any political tests in violation of the First, Fifth or Fourteenth Amendments of the Constitution of the United States subsequent to the commencement of his study of law. He put in three full years in the study of law in the State of California and passed his Bar examination. Only at that time, and for the first time, was he informed by

---

[24]As a matter of fact legislation proposing a special loyalty oath for lawyers was proposed by a committee of the Board of Governors of the State Bar in 1955. This proposal was thoroughly discussed by the lawyers of the State in open hearings in Los Angeles and San Francisco. (February and March, 1955.) Thereafter, a greatly restricted proposal was introduced in the State legislature and failed of passage.

the Committee of Bar Examiners (if indeed he was informed at all any time) that political tests were now being instituted in the State of California as a prerequisite for the practice of law.

It is submitted that to place this new interpretation upon the meaning of good moral character within the statutes setting up the Committee of Bar Examiners in the State of California was a denial of the right to due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States insofar as it was applied by the Committee of Bar Examiners to this Petitioner.

IX.

CONCLUSION.

The judgment should be reversed and upon the record Petitioner be adjudged entitled to admission to the Bar of the State of California.

Respectfully submitted,

EDWARD MOSK,
Attorney for Petitioner.

SAMUEL ROSENWEIN,
Of Counsel.

Dated: October 15, 1956.